

# QUID NOVI

**Université McGill,  
Faculté de Droit  
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**McGill University,  
Faculty of Law  
Volume 31, no. 6  
November 17th, 2009**

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## QUID NOVI

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## Éditorial/Editorial Monday Morning Laughs

by Chanel Sterie (LAW II)

Over the past few weeks, my fellow 2Ls have been busy preparing presentations for our Legal Methodology class. Now, the task wasn't exactly easy. We were set up in groups of approximately 17 people and expected to produce a skit that would both inform and entertain our classmates on Monday mornings.

The presentations focused on various aspects of professional responsibility, such as conflicts of interest, intimate relations with clients and ethics in negotiations.

They were all very entertaining and brought to light the amazing creative skills and hidden talents of our class. Not one presentation failed to amuse.

Creativeness came in many forms. No detail was overlooked, from creation of costumes to editing of videos. The result was a multitude of remarkable videos, amusing characters, and at least one riotous host.

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Toute contribution doit indiquer l'auteur et son origine et n'est publiée qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction telle que décrite à l'adresse:  
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Contributions should preferably be submitted as a .doc attachment (**and not, for instance, a ".docx."**).  
Contributions should also include the **student year** of the contributor.



# A closer look at judicial appointments

by Jonathan Katz (LAW II)

Professor Macdonald's November 10th article, "Time to stop exaggerating about patronage," brought a healthy dose of common sense to the recent controversy surrounding the current Government's judicial appointments. The article is right to conclude that past donations to political parties should not disqualify leading candidates from obtaining appointments. The controversy surrounding an appointee who has donated \$300 to a party is but a tempest in a teapot. Indeed, to cry foul over such minor past political engagement only unfairly heightens the current miserable climate of cynicism towards both Parliament and the judiciary.

Judicial appointments can, in fact, offer rare glimpses into the kind of cross-party consensus and civility that is sorely lacking in our current Parliament. Justice Marshall Rothstein was, for example, originally nominated by a Liberal Government and subsequently confirmed by the Tories.

That said, while Professor Macdonald rightfully qualified his arguments by noting that improvements to the federal appointment process do need to be made, his piece did not discuss what I perceive to be a very real threat to judicial independence posed by the Harper Government's recent changes to the bodies that appoint members to the bench.

I am referring to the Government's establishment of significant changes to the composition and functioning of judicial advisory committees (JACs) – committees of experts mandated to recommend candidates for federal judicial nominations. The Tories have increased the size of the committees to include a member of the law enforcement community; disenfranchised the federal judge on committees; and removed the "highly recommended" designation in favour of two broader categories of "recommended" candidates and those who they are "unable to recommend." The long-term fallout from these seem-

ingly minor changes to the structure of obscure administrative bodies may be dramatic. By appointing a police officer to the JACs, the Government is giving a disproportionate voice in appointments to a player in the criminal legal process, despite the fact that the overwhelming majority of cases that will come before federally appointed judges will have nothing to do with criminal law.

More troubling, by relegating the judge on JACs to a non-voting position, the Government is disenfranchising the one committee member who is – by virtue of having served on the bench – best positioned to identify the criteria of a good candidate.

Finally, by eliminating the "highly recommended" designation of candidates, the Government is preventing JACs from identifying the cream of the crop of potential judges. This invites the government to favour a mediocre candidate – who may have strong partisan credentials – over more suitable alternatives.

McGill Law Professor (on leave) and Former Minister of Justice, Irwin Cotler, has argued that the combined effect of these reforms threaten to "bring about both a political and ideological politicization of the appointment process, which would lead to the politicization of the judiciary itself" (The Law Times, February 20, 2007).

Cotler is not known for taking partisan pot shots; his concerns are sincere, reasonable and shared by the Canadian Judicial Council, the Canadian Bar Association and leading constitutional scholars, most notably Professor Peter Russell.

Thus, while Professor Macdonald is right to point to the overall quality of recently nominated judges, we must nonetheless remain mindful of the potentially adverse effects of an evolving judicial appointment process, which may be setting us on the path towards a judiciary composed of unqualified ideological appointees, even if such a situation today seems inconceivable.





# APLAM, Recently Very Active: A Quick Recap

by Yuheng Zhang (LAW III)

APLAM (Asia Pacific Law Association at McGill) seeks to promote student interest in the law of Asia Pacific countries and their practice in both Canada and abroad. We also encourage cultural dialogue and learning through community involvement and activities that highlight the Asia Pacific region's richness and diversity. Thanks to all those who have supported our recent activities; if you weren't able to attend, there are more to come! Here's a quick snapshot of what we've been up to.

## **FACL Conference: "Strength in Diversity"**

On Saturday, November 7th, eight (yes, 8!) APLAM members were in Toronto to attend the third annual Federation of Asian Canadian Lawyers (FACL) conference. FACL is a Toronto-based group seeking to promote equity, justice and opportunity for Asian Canadians in both the legal profession and the wider community. This year's conference on "Strength in Diversity" took place at the University of Toronto Law Faculty. One highlight was the keynote lecture given by the Honourable Frank Iacobucci. In addition to sharing his experience working as the lead representative for the fed-

## **MARK YOUR CALENDARS!**

**Who: You, APLAM What: Brown Bag Lunch**

**When: 11h30-12h30 Tuesday November 24th, 2009**

**Where: First floor of Thomson House**

**Why: We've been busy this semester, and would like to share the experiences we've had with people who weren't able to attend. We'll have a quick update on our exchanges portfolio. Then we'd like to hear what you've liked/disliked about our activities to date and chat about what you can get out of the Speakers Series as well as the conferences we've attended.**

**Bring or buy your lunch for this casual conversation. All are welcome, au plaisir!**

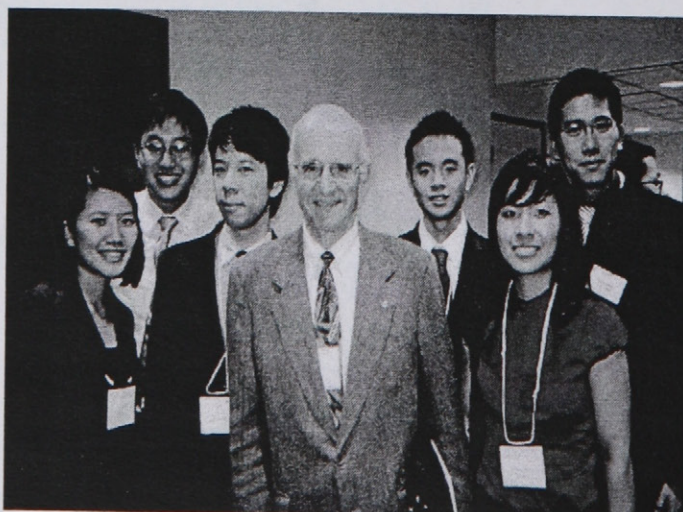
eral government in the residential schools settlement, Justice Iacobucci described growing up as part of the Italian minority in East Vancouver. We were delighted to have Professor Shauna Van Praagh introduce us to Justice Iacobucci (we even got a quick "fan" photo in!).

Other highlights include a panel of Ontario judges and a discussion of diversity initiatives on Bay Street. Justices Juriansz, Nakatsuru, and Pawagi spoke on the need to not stereotype judges and lawyers based on race. Each judge will be influenced by his or her own unique set of personal experiences, including cultural background. Later, the diversity panel of judges projected a feeling that Bay Street firms are becoming genuinely

committed to bringing diversity to the workplace and changing the all-white, straight male culture.

APLAM's presence marked the first APLAM-FACL experience and also the first time FACL has reached outside Ontario. Amongst the 200-some lawyers and students, McGill was definitely very well represented. This was certainly a trip worth taking, and we look forward to bringing some civilian thought to future FACL events.

Next up: the National Asia Pacific American Bar Association (NAPABA) conference in Boston, Nov. 18-22!



*APLAM members pose with the Honourable Frank Iacobucci during the lunch break*





APLAM's attendees at FACL (from right to left): Jeff Li, Prof. Van Praagh, Henry Ngan, Cindy Kou, Yuheng Zhang, Christina Nguyen, Christopher Nguyen, Leo Wang

### Fasken Panel Discussion on doing Business in Asia

On Tuesday, November 3rd, Fasken Martineau held a panel discussion on building healthy business relationships in Asia. The panel, consisting of four lawyers, a CIO, and Raymond Chrétien, former Canadian ambassador to France, the United States, Belgium, Mexico and the Congo, highlighted the importance of trust and patience when dealing with clients in Asia and India. Several lawyers shared their first-hand experiences in these different business cultures. In attendance were a great number of McGill students as well as several fellow law students from UdeM. This was an exciting new look at an area of the world that previously held many unknowns and misconceptions.



The Panel from Fasken Martineau (from left to right): Irwin Kyer, Hsiao-Chen Lin, Sylvain Charpentier, Verna Cuthbert, Mark Stinson, Raymond Chrétien

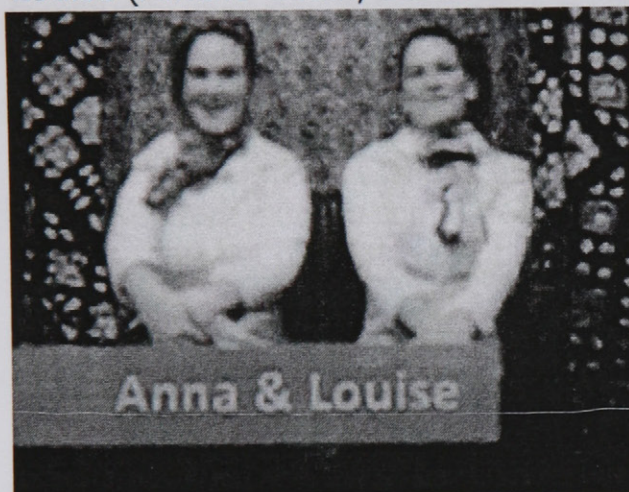


# DROIT À L'IMAGE

## LEGAL METH II PRESENTATION REVIEW: The Loyal Lawyer

Michael Bookman leads this skit, a sales pitch for the Loyal lawyer™. These lawyers will never violate their duty of loyalty, even when faced with the toughest situations. Video segments highlight the problems of conflicting loyalty.

La séquence préférée du Quid est l'histoire d'Anna & Louise (Amélie Gouin, Sarah Marsolais-Ricard) qui



nous parlent de la représentation simultanée. Elles le font à l'unisson tout en faisant les mêmes expressions et mouvements avec précision. Ce vidéo a été

suivi par un représentation de « Dr. Laskin » par Catherine Rousseau-Saine portant, essentiellement, un costume de graisse. Le Quid a bien aimé cette partie de la présentation. Bravo vous trois!



The Quid feels it's now time to express what has been the unwritten rule of these legal meth presentations. Simply put, your presentation must either make a joke about legal meth or include a sequence about hockey. Really, this should be in the criteria Me. Lamed establishes for next year.

## LEGAL METH II PRESENTATION REVIEW: Confidentiality

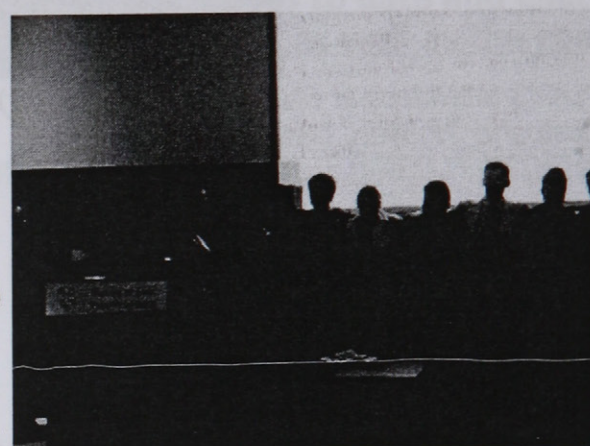
This presentation, a Law & Order parody, presents a number of situations in which confidentiality issues may arise.

First, client Christopher Maughan has record of offenses mostly along the lines of disturbing the peace for actions such as singing outside, and indecent exposure ('It was hot that day!'). When his attorney, played by Amine Kettani refers him to a counselor, Maughan reveals his plan to pie the Queen when she comes to down, an action that would violate s. 49 of

Charlie Feldman (LAW II)

The Quid brings this up now because this presentation did both. First, Kerwin Myler plays a disgruntled Leafs fan whose new Loyal Lawyer™ provides him with sagacious advice – become a Habs fan. This was followed by a parody of 'The Office' in which Roger (Francisco Torres)'s new boss, Wayne (Jonny Asselstine) has dirt on a client from his work at a previous firm; when confronted with this, Torres remarks 'You can't tell me this – didn't you pay attention in Legal Meth?!'. The Office parody wins points for being done in proper mockumentary style.

The presentation concludes with a song – a first for the legal meth presentations so far. All 17 group members sang a song about the 'duty of loyalty' to the tune of 'Stand by Me'. The Quid queries why this is not available for download on iTunes. As if it was not enough on its own, dance moves (including the can-can and the happy hands) complemented the song.



**Best acting: Amélie Gouin, Sarah-Marsolais-Ricard, Catherine Rousseau-Saine. Best parody: Francisco Torres, Jonny Asselstine, Kerwin Myler for 'The Office'. Best song: all 17 group members. Best product: the Loyal Lawyer (for 12 easy payments of \$199.99, or \$2399.88). Most likely to be an infomercial host: Michael Bookman.**

the Criminal Code. No, seriously, it's a crime to 'alarm Her Majesty'.

Anywho, the matter goes to the Courtroom of Justice McHick, who, despite a southern accent, straw hat and being repeatedly being called 'Your Honor' provides Canadian legal advice with assiduous aplomb throughout all the court scenes.

The second such Court scene involves Crown Counsel (Joanna Baron) presenting a request for a previous lawyer-client conversation to become public. The case at bar involves the theft of parachute pants and the suspected involvement of one Mr. Hammer. Points

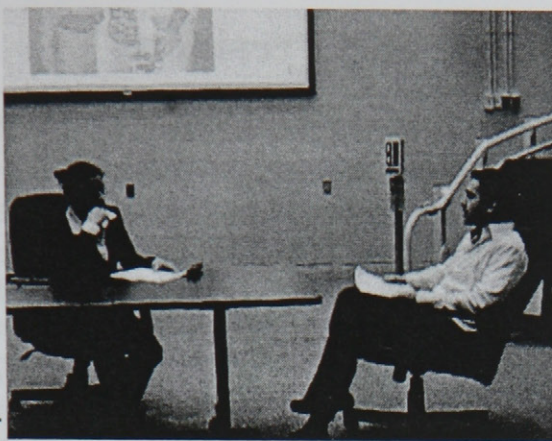


# DROIT À L'IMAGE

Charlie Feldman (LAW II)

here go for the playing of the 'U Can't Touch This' music video.

The third and final scenario brings back Chris Maughan as a man going through a divorce. When he tells his lawyer that he's gay, the lawyer



then tells his wife in an effort to sleep with her. The lawyer here is played by Amine Kettani (here por-

trayed as a pimp). The skit wins points for pictures of Amine and the wife (Joanna Baron) on display documenting their relationship (or, their excellent use of PhotoBooth on a Mac).

**Best Acting: Chris Maughan, Amine Kettani (tie). Most likely to have reprise their roles as advocates in the real world: Joanna Baron and Andreea Vasiliu. Best use of technology in a skit: Maroussia Lévesque calling Amine Kettani, but, literally, calling his phone during the skit. Best crime: (tie) alarming the Queen and stealing parachute pants.**

## Reviews not printed: Advanced Common Law Obligations (Prof. Gold)

This week marked the final week of presentations in Advanced Common Law Obligations with Prof. Gold. It would indeed seem that 2L is the time to channel the artsy side of things, and the Quid thoroughly enjoyed seeing the variety of ideas people had. There were plenty of 'by the book' presentations, lots of fun videos, at least one interpretive dance number, and more than one game show parody. Great job, everyone!

## COMING SOON: LEGAL METH II AWARDS!!!!

You've seen the skits... you've read the reviews...you may have even watched a clip or two on Facebook. Given that (when you read this) we will have finished legal meth presentations, look in this section for a ballot to vote for your favourite actors and skits next week (along with a review of the final legal meth presentations). Obviously, reviews have been one-sided (from yours truly) but at the end of the day, the power to determine greatness is in your hands! So, start thinking about what you enjoyed the most, and don't forget to vote next week! Results will be announced in the final Quid of the year, printed Dec 1st

## ...Disons... (Overheard at the fac)

3L: I'm not going to that class anymore. I'm done. Give me the bill cause I am checking OUT!

3L: KEEP YOUR SWINE FLU AT HOME!!!

2L: Nobody ever tells pretty people that they're bad at things...

2L: If you were an obligation, I would NEVER subrogate!

2L: Movember is for people who are single.... And plan to stay that way for the rest of the month!

1L: I don't get why that guy at the SAO is wearing the glove... I mean, Michael Jackson died several months ago, the tribute can end soon...

1L: You want to quote me in the Quid? People actually read that?

"It has two specialized divisions – tax court and military court - you couldn't go through LIFE without knowing that!" – Prof. Jukier

"It's very hard not to ever come into contact or relationships with other human beings, to isolate yourself completely from everyone. Believe me, I've tried" - Prof. Adams

"You wake up and find you've got people sticking to you" – Prof. Adams

Well, droit à l'image sat in the atrium for a few hours and recorded quotables that, well, without context, make our faculty seem... a little... uhh.. dirty. So, from the mouths of 2Ls.... "People

enjoy being touched – I know I do" (re the need for human contact, lacking in modern western society). "The evidence was in my mouth" (re having chewed something). "They have their coke orgies" (speculation as to the social lives of LLM students). "I just want to fist you" (re someone going for an unrequited dap).

...and in the accidental meanness section...

2L: I've got more [clown] noses than you!

Quid: Yeah, and you've also got more chins.

- The Quid apologizes, but did think it was a good one-liner at the time.

## Submissions:

**quid.charlie@gmail.com.** We reserve the right to edit, modify, translate, embellish or ignore completely.



# Your LSA Council has finally met!

by Alexandre Shee (LAW III) LSA President

Certain interesting and pertinent questions were raised in an article written by Charlie Feldman last week, which I agree with in great part. However, some things were left unclear and some questions unanswered. I would like to take the time to clarify the issues and outline what the LSA Executive has already envisioned to remedy this problem.

## The Context

In a bid to increase communication, transparency, and accountability, my executive and I have been writing to you on a regular basis in the Quid, have held a Special Budget Townhall and regular office hours. I have personally met on different occasions with all class presidents, both together and individually, all members of newly appointed committees, and Faculty Councillors in order to gauge their opinions and understand their points of view. Members of the executive have been meeting on a weekly basis, discussing issues and raising concerns. As volunteer students, my executive and I hold ourselves to an incredibly high standard and act in good faith, trying to accomplish a common vision for the LSA while creating viable and sustainable initiatives that will last beyond our year.

The LSA Council, the Board of Directors of your student association, is not the LSA, nor is it its legislative branch. You have the power to decide in a General Assembly or Special General Assembly, as well as elections and referenda, the fate of your student government. The LSA Council acts in an advisory role to insure coherence with LSA policies and accountability outside of the executive. Until elections are held for faculty council, the executive assumes that role in order to ensure the smooth transition during the summer months and beginning of the year.

The LSA Council was unable to meet because all of its members were not voted in by the 15th of October. Nevertheless, councillors' voices were listened

to and student concerns were heard. Furthermore, I wholeheartedly agree that the constitution should be revisited and am thrilled that Charlie's article will get the ball rolling.

## A New Constitution?

I strongly think that the constitution needs a revamp. The LSA Executive has decided to take a step in the right direction by initiating a process of reform, which will culminate in a referendum period next semester. It will be up to you to decide how the LSA moves forward and in which direction.

The LSA Executive and Green Commission are proposing a new section of by-laws dealing with sustainability and ethical purchases and practices. This is being brought up in the first meeting of LSA Council and has been in the works since the beginning of the semester. In these new by-laws, the constitution would reflect the LSA Executive's willingness to make the LSA better both for our community and for our world. Climate change and social issues need to be dealt with in the scope where we can affect change.

From events to transportation, recycling

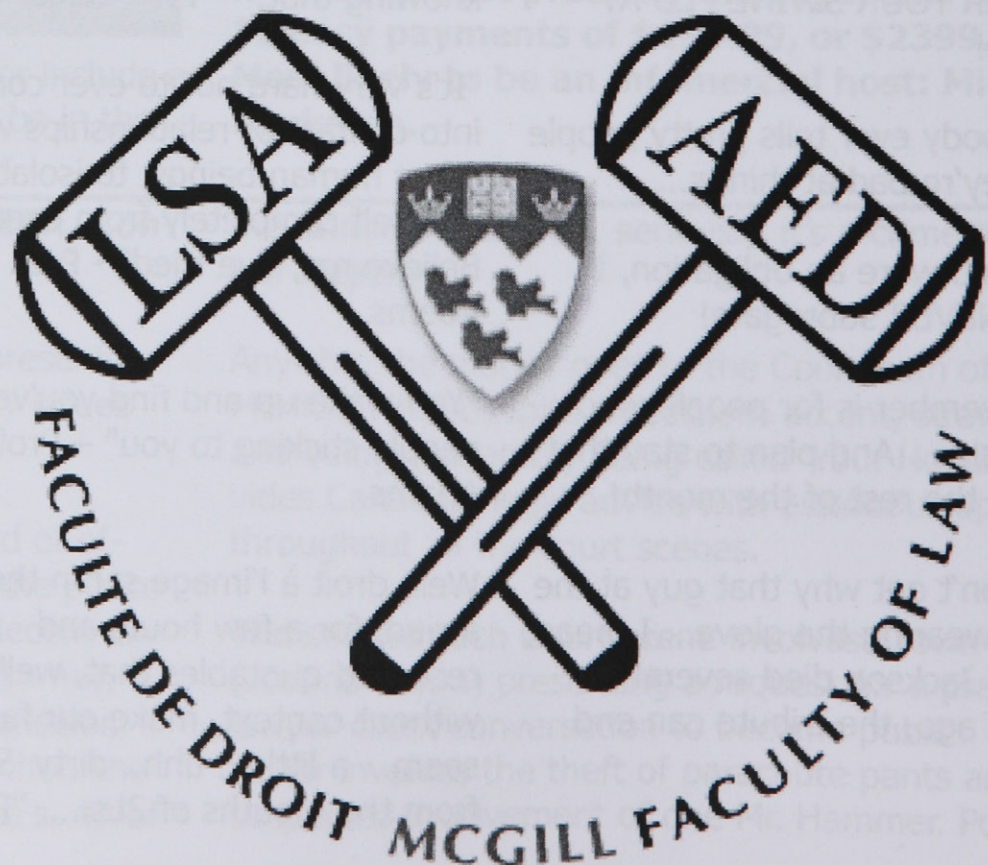
to ethical purchasing, these new by-laws would reflect the growing sustainable consciousness of our faculty. They will be a first step forward in this year's constitutional reforms.

In order to make the process as equitable and open as possible, I would strongly encourage you to send your suggestions for future changes to me, any member of the executive or your class presidents. We have to work as a community on bettering the LSA.

In the future, other possible reforms will center around the role of LSA Council, the mandates of the LSA Executive, our relationship with other student governance bodies, as well as the timetable and obligations of the Association.

These are all within the vision of bettering the LSA and increasing its connectedness with student concerns.

Your ideas and suggestions are always welcome! And I am happy that Charlie has raised this issue into the LSA collective consciousness. Pass by our office, send us an e-mail or stop by LSA Council to make your voice heard and your ideas listened to.





# Finals and Follies: A 1L's Take

by Chase Barlet (LAW I)

It is November; exams commence in one month. I now find myself susceptible not only to H1N1, but also to spontaneous self-implosion. Daily I am reassured by my very knowing upper-year colleagues who, with evident glee, seek to expound upon their *sagesse* to inform me of the perilous fight they waged and won during their first exam season. Truly their wisdom must know no bounds, and I humbly absorb every word, unable to contemplate that someday I too will possess such intellectual clairvoyance. I imagine the view in retrospect will someday strike me as comical; at present, however, I find no entertainment in the vacuum of uncertainty in which I find myself suspended. The law remains a wondrous mistress that I continue to fear will never give in to my seduction. Despite that, however, I do have some thoughts that I have managed to untangle from the web of jumbled words and ideas now lodged in my head, no longer stuck on my mental list of "backordered thoughts to be processed."

In this article I would humbly like to share but a few of these thoughts. I do so for the empathy of my first-year peers, the pleasure of upper-years, the professors' and administration's good judgment, and, of course, my own sanity.

Before I begin, I propose that the most simple and effective remedy is to do away with exams. "That is not reasonable," you're probably thinking. Admitted; thus I ask a question that has no doubt been considered before, and therefore I ask it rhetorically and ask you to humour my curiosity. To save time, I have also rationalized and decided on my own answer. Why can our programme not be pass/fail? Harvard, Yale and Stanford have all abandoned their grades. Whether they did so out of ego or common sense, I find their decision alluring. With the sheer number of B's given (I found and read the grade-breakdown sheet on the wall), I

fail to see why moving to such a system would be difficult. Answer? Perhaps it is just a rite of passage that I may one day I may look back upon with fondness and warmth. One day, McGill Law grasps tightly to its traditions while still charging forward as a progressive, forward-looking institution. After all, this is "that school in Canada that broke tradition to try something called the 'transsystemic programme.'" I, for one (and I imagine many of my peers would whole-heartedly agree) would welcome a break from tradition in this particular instance so as to generate a more authentic and genuine learning environment. There is much to be said about learning for the sake of learning versus cramming a summary tailored to an exam.

Still, I realistically understand that my first proposal may be daft and is quite liable to objection. I doubt it would be met by many in charge with little more than a polite nod of acknowledgement. Therefore, although I am but a wee first year, I now move on to a more light-hearted list of suggestions for studying for my fellow that I have personally found pertinent these past few weeks.

First, I ignore dreams. I recommend you do the same. It started about a month ago. At 3:00 AM one Saturday morning, I awoke up in a fit of terrified panic. Professor Saumier had distributed a test in the middle of the semester without warning. Unthinkable! I should have known it was a nightmare; Prof. Saumier would never refer to our class as "torts" in real life. Yet that Saturday morning, I imagined the sheer horror of having an exam placed in front of me next to an unopened course-pack I did not even know existed. (If Prof. Saumier stumbles upon this, I assure you that I do in fact read.) About two weeks ago, the second dream hit. This time, I arrived to my contracts exam and was stopped at the door by Professor Dedek who insisted my summary be translated into German

if it were to be used on his exam. I do not speak German. Again, I should have known it was an implausible nightmare – the ever-stylish Prof. Dedek had been sporting a sweatshirt in my dream. Still, I freaked out. Freak-outs and exams already go hand in hand; no need to bait the line further. An aside, however: day-dreams appear safely acceptable. I recently imagined Professor Lametti informing us that he would be cancelling the exam this semester in favour of a field-trip to the Gaspé to relive his summer vacation. (Which, Professor, you are still very, very welcome to do.)

Next, I suggest that study location is incredibly important. To each his own, but personally I consider the library to be the last place in which I'd desire to tuck myself away. Perhaps I am merely exceptionally susceptible, but in the library, stress transmits more virulently than the swine flu. By December, I fear a full-blown panic pandemic will take siege. With no vaccination against that contagion, I instead prefer and duly recommend that you cordon yourself off somewhere clean where bacterial and stress germs cannot threaten you, wherever that may be. In my case, it's my bathroom. Thanks to OCD, my tolerance of germs, particularly in the bathroom, has turned my tile and porcelain into a testing ground for Lysol disinfectant products. Bathrooms are already impressively dull, and I have found that by quarantining myself there, constitutional law becomes instantly more interesting without the distractions of television, my computer, soft furniture, and the kitchen. Adding some environmental guilt also goes a long way as a study aid. Filling up the bathtub and then confining myself there allows me to sweat out my stress while rendering me stuck and focused on reading at least long enough to justify using that much hot water at once.

Third, the number of people present when you study is also important. I admittedly have the attention span of a



gnat. I am both easily distracted and easily amused. This often makes my presence around others dangerous to the potential success of everyone involved. I do, however, respond well to clear and obvious glares of condescending judgment. Acquiring one candid comrade who is willing to patronize, and dragging him or her along with me (whether by force or guile) has solicited remarkably productive results. In my enthusiasm to please, we both accomplish quite a lot.

Finally, I balance my life; not to do so would result in my wreaking a guaranteed whirlwind of havoc. I prepare for my exams. I also take care of myself, work out, clean and keep my apartment presentable, eat well, and get enough sleep. Until proven wrong, I will continue to swear by this approach. Indeed, there are times when it is rather fashionable to complain about being in law school. But life is too short and the future too bright to spend each moment caught in the updrafts of stress and

worry. I'm grateful for the opportunity I have to be here. It is a stimulating, exciting, and wonderful time for all of us worth celebrating in the moment. I suppose, then, that in some strange way, I should somehow be grateful for these exams. Eliciting that gratitude may still require some real effort, and to avoid it, I instead retire to my favourite corner to study another challenge: more law.

## Reflection: Hameed Talk

by Christopher Maughan (LAW II)

Considering all the recent abuses of power it has perpetrated in the name of national security, it's sad to think that the U.S. can teach Canada a lesson when it comes to protecting the rights of citizens.

But it's true. Consider the following statute:

"Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment.

"If it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means [...] as he may think necessary and proper to obtain or effectuate the release."

That was Title 22, Chapter 23, Section 1732 of the U.S. Code, a collection of American federal laws. How sad it is that there doesn't seem to be a Canadian equivalent.

On Wednesday night, Yavar Hameed, counsel for Abousfian Abdelrazik, reminded students at the Faculty why we

might need one. He was at McGill to speak out against Canada's complicity in the unlawful detention of his client in a Sudanese prison and the government's refusal to allow him to return home. Mr. Hameed's talk was an introduction to the Symposium on Counterterrorism and Civil Liberties, which will be taking place at McGill next semester.

His client, Mr. Abdelrazik, was detained in Sudan – without ever facing a criminal charge – for the better part of six years. While in detention, he was repeatedly tortured. The CSIS agents who questioned him even told him, "Sudan would be his Guantanamo."

When he was released in 2006, the government opposed his repatriation at every turn until Mr. Hameed and his legal team convinced Federal Court judge Russel Zinn to order his return. In a stinging indictment of Canadian and international security policy, Justice Zinn compared Mr. Abdelrazik's ordeal to a scene from Franz Kafka's *The Trial*.

"It's an apt analogy because once you are branded, once you fall under this net of suspicion [of terrorism], it's up to you as an individual to prove to the general public that you are not deserving of that title," Mr. Hameed told students last Wednesday.

Mr. Abdelrazik is a recent addition to a growing list of Canadians who have

been, in one way or another, abandoned by their government overseas. This list includes Maher Arar, Ahmad Abou El-Maati, Omar Khadr, and Suaad Hagi Mohamud, among others.

"There is deliberate political maneuvering to deny rights to Canadian citizens, and to be clear, these are Canadians of a different background, a different religion, and a different colour. And I don't think it's inappropriate or mistaken to say that this is the enforcement of a second tier of citizenship," said Mr. Hameed.

Those are strong accusations. But given the government's persistent refusals to repatriate Mr. Abdelrazik, even after he was cleared of any wrongdoing, as well as the irresponsible statements from the director of CSIS accusing him of being a media opportunist, it's clear that Canada's national security policy is indeed highly politicized.

The solutions to this problem are multifaceted, complex, and often very contentious. But Mr. Hameed made a few suggestions that are – at the very least – hard to disagree with.

One of them was that Canada should create a national security oversight body with the power to make binding orders. The Security and Intelligence Review Committee oversees CSIS, but it has no teeth – Mr. Hameed explained



that as the law stands today, CSIS is under no obligation to follow the Review Committee's recommendations. This has to change.

Mr. Hameed also called for greater openness during Review Committee hearings. As it stands now, CSIS agents being cross-examined can request to answer questions in camera whenever they see fit. Mr. Hameed said that a change to that rule might lead to greater accountability.

Finally, he took the view that Canadian

courts must be prepared to recognize *Charter* application overseas, even despite the recent decisions in *R. v. Hape* and *He*. He took the view that those decisions could be distinguished on their facts from an Omar Khadr-type situation.

"When you have a Canadian citizen in a foreign territory being questioned by Canadian state agents, and he is clearly subject to an interrogation which is in the full power of Canadians to direct... if that interrogation is in and of itself found to be coercive interrogation or

torture, it would be absurd not to allow the application of the *Charter* in that context," he said.

Last week, some of Canada's top constitutional lawyers were at the Supreme Court, arguing that the *Charter* demands Omar Khadr's repatriation. Let's hope the Court shares Mr. Hameed's perspective.

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## "NOTIONS OF CITIZENSHIP" Column An Initiative of the Black Law Students' Association at McGill

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This year the Black Law Students' Association at McGill (BLSAM) has chosen to focus on the theme "Notions of Citizenship". One of our goals this year is to generate discussion amongst law students about what it means to be a citizen. To further this objective, we decided to start a Quid column. This is an inclusive column, designed to illuminate important, yet often overlooked issues. We look forward to a rich and diverse selection of articles!

Si vous avez un article ou une définition intéressante sur la notion de citoyenneté à soumettre, veuillez nous envoyer un courriel à [blsa.law@mail.mcgill.ca](mailto:blsa.law@mail.mcgill.ca). (Les articles soumis directement au Quid n'apparaîtront pas dans la rubrique de BLSAM). De plus, l'article publié dans le Quid sera disponible sur notre site-web: [www.blsam.mcgill.ca](http://www.blsam.mcgill.ca). Ce projet dépend de votre participation!

BLSAM Executive 2009 -2010

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# Si, se puede.

by Mina Chamsi (LAW II)

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"Pourquoi le droit? Pourquoi pas l'éducation?" m'avait-on demandé lors de mon entrevue en droit. J'avais déjà une idée de la réponse : mon expérience au Chili me l'a confirmée.

Somehow overwhelmed by my first year of law school and exhausted by the whirlwind of finals, that particular question asked during my interview was constantly on my mind. I was starting to question my career choice. However, there was one thing I was sure of: I wanted to spend my summer outside of the law field. So, I packed my bags and went to the South Hemisphere, as a volunteer teacher for the Chilean Ministry of Education. At the time, I was only conscious of my desire for evasion; and the good deed I was about to accomplish: what is more gratifying than helping others, especially young kids?

The irony of it all? I came back with an

increased interest for the promotion of education, but an even greater respect for Law and a renowned enthusiasm for what I hope will be my future profession: lawyer. The uncertainty was washed away. I went to Chile to teach, but it was I who learned the greatest lesson. This is the story of my summer journey.

In Santiago, it was shocking to notice the difference between the neighbourhood where my school was and the centre of the city. The MINEDUC (Ministerio de Educacion de Chile) had placed me in what they call the most dangerous and the poorest area of the capital, La Pintana. The very first day I went to my host family's house, my pre-occupied Chilean mom tried to figure out a safe way for me to get to my school and sought the neighbour's help. Even though we lived in the area right next to it, nobody knew which bus to

take to get to La Pintana.

So far, I was already frightened by the dangerous reputation of the area before even putting my feet on its soil. The first thing I was told when I got to my school was their reassurance that I was safe as long as I was inside the property. The principal was already grateful for a work I hadn't done yet, telling me it was a great gift I was courageously giving to her students, who were all "amorritos".

*Amorritos* they were. They were willing to give the little they had. They acknowledged and valued the smallest things. They wouldn't communicate their fears and problems, but would listen to a foreigner's moral lessons.

*Por que?* Ils ne comprenaient pas la raison pour laquelle on était là. La première fois que je fus présentée à ma



première classe, la réaction des adolescents me fit penser à celle d'un étudiant de Georges-Vanier alors qu'on expliquait notre visite dans le cadre du programme de High School Outreach. « Ouais, c'est parce que le monde de GV font ben dur et vont pas loin dans la vie! » À l'autre bout du continent, ils me demandaient à quoi servait d'apprendre l'anglais alors qu'ils n'avaient même pas les moyens d'aller à l'université, et se demandaient pourquoi ils envoyaient des bénévoles à leur école, au lieu d'investir de l'argent dans leur quartier.

*Humildad.* Humilité. Ces étudiants qui écrivaient des cartes pour me remercier d'avoir pris une simple photo avec eux. Qui avaient organisé une fête pour nous remercier de notre présence. Qui essayaient d'exprimer leur reconnaissance en anglais. Qui arrivaient à temps aux cours, même après avoir travaillé toute la nuit. Qui revenaient la tête haute mais les pieds sur terre après avoir remporté des concours régionaux. Qui chantaient des chansons folkloriques et les dansaient pour partager leur culture. Qui accueillait à bras ouverts des jeunes Canadiens de leur âge (qui avaient le privilège d'explorer le Chili, un pays dont la majorité d'entre eux n'avaient pas l'opportunité de visiter plus loin que Santiago) en leur expliquant le conflit des gangs dans leur quartier et l'éventualité qu'ils en fassent partie.

*Gracias por venir hasta el fin del mundo.* Ils m'exprimaient leur gratitude tous les jours. Ils ignoraient à quel point j'étais reconnaissante. Que j'avais appris d'eux beaucoup plus que ce que j'essayais d'enseigner. Que j'étais inspirée par leur dévouement et leur sincérité dans la lutte silencieuse qu'ils menaient contre l'étiquette qui leur était apposée, contre la pauvreté à laquelle leurs parents étaient acculés, contre les dangers qui guettaient leurs meilleurs amis, contre la menace que constituaient la drogue et l'alcoolisme. Et je voulais m'engager dans leur lutte pacifique contre les préjugés auxquels ils faisaient face. Au près de ma voisine dont les deux fils bénéficiaient d'une éducation dans un des meilleurs établissements de la ville et de cours d'anglais privés, et qui pourtant passaient le plus clair de leur temps à «

Facebokar ». Au près de ma sœur d'accueil à laquelle je racontais les exploits de mes étudiants et les concours qu'ils avaient gagnés. Au près d'un avocat qui voulait me montrer les quartiers « les plus européens » de sa ville. Au près des conducteurs de colectivo et des passagers d'autobus à qui je parlais de mon école et de ses étudiants et expliquais comment s'y rendre.

*Asi es la vida.* J'apprenais tous les jours du combat quotidien qu'ils mènent contre les circonstances dans lesquelles ils ont grandi. L'hiver, le soleil se couche vers 17h30 à Santiago. Heure avant laquelle tous les étudiants de l'école doivent être entrés à la maison. Exception pour ceux qui doivent travailler jusqu'à 10h du soir pour payer leur logement. Juste avant les vacances d'hiver, il y a une tradition qui veut que les étudiants aient un « carrete » où ne se dansent que le reggeaton et la cumba, une fête aux allures de discothèque. À la Pintana, elle doit se faire dans la cafétéria, car il n'y a pas de gymnase, et en plein après-midi, car on ne veut pas se faire agresser ou tuer en sortant la nuit. Les vitres couvertes par du papier pour donner un semblant de l'ambiance désirée et les tables à manger tassées d'un côté pour donner plus d'espace, on dansait. Un « carrete » qui n'avait rien à voir au party de fin de session de l'école de ma sœur d'accueil, fête à laquelle j'étais invitée, dans un gymnase avec des colonnes de marbre, deux DJs et deux groupes de danseurs qui offraient un spectacle haut en couleurs et en lumières, jusqu'au plein milieu de la nuit. Pourtant, elle avait le même âge et la même passion pour le reggeaton que mes élèves.

*Ten cuidado.* Be careful. One day after school, I went against my Chilean mom's advice and decided to visit La Pintana with one of my students, to see more of her neighbourhood. We only walked to the mall and the empty park. She told me she didn't want me "to see the ugly Santiago." And, yet, it was one of the most beautiful sights I had seen in Santiago. The deep eyes through which so many stories could be told, a school principal fondly hugging her students, and gorgeous snow tipped mountains that weren't hidden by any

building. In fact, when I was asked what was the image I had of Santiago, I would spontaneously say "La Pintana."

*Que imagen se va a llevar de mi país?* C'était le meilleur ami de ma mère chilienne qui m'avait demandé l'image que j'avais de son pays lorsqu'il était venu partager un repas avec nous. Élégalement vêtu, il parlait fièrement de l'emploi qu'il occupait dans sa jeunesse et des cours de salsa qu'il donnait auparavant. Avant de quitter Santiago, je le revis. Cette fois-ci, il vint avec son uniforme de travail, une mine épuisée et la tête couverte par une tuque en laine. « Je suis désolé que tu me voies dans un tel état », me dit-il tristement en me tendant les livres qu'il m'avait offerts. « Que tu te souviennes de moi à travers la littérature de mon pays, qui raconte l'histoire que mon peuple a connue et le courage qu'il eu pour se relever. Rappele-toi toujours de mes paroles de vieux : *La vida es una lucha.* »

Effectivement, la vie est une lutte. Pour moi-même et pour les autres.

The law student's struggle against sleep when papers need to be written and deadline met; or even something as insignificant as the struggle against the temptation to log on Facebook during a lecture. But I've also learned there are those struggles one also has to lead for others: for the child who died behind his house by street gangs gunshots, for the pregnant teenage girl who wanted to finish school and be a teacher, for the young man who wants to hold his boyfriend's hand on the street without fear, for the jobless single mom who only has 20 dollars a month to feed her children, for the 52 year old Peruvian janitor who works 6 days a week but faces discrimination 24/7, for the Mapuche (indigenous) grandfather who has to sell his belongings on the street to survive. Quand je pense à ces luttes qui restent à mener, je me rappelle des mots de Paula, une étudiante de La Pintana, quand elle pratiquait son discours sur Stephen Hawkins pour le concours d'anglais : « *Si, se puede.* »

And when I think of my interview, and one of the only questions I can recall, I remember what my Chilean friend told



me before leaving the country: "You've seen a lot as a teacher. Next time, come back as a lawyer, you'll have more power to fight against the injustices you've seen." *Si, se puede*, diraient Paula et les autres enfants de la Pintana.

I might never go back to Chile as a lawyer, but if this summer taught me anything is that I didn't make a mistake by choosing law over any other profession. Life as a law student is never easy, codes and jurisprudence are sometimes hard to decipher, papers don't write themselves and coursepacks are heavy, but I believe the reward will be worth all the trouble. As future lawyers, we get the best tool to fight for our convictions: knowledge of the law and the aptitude to work towards its improvement, be it in education or any other field of our society. My work in Chile helped me realize that education lies in the heart of the law, that the principles and the mechanisms of law make it possible for education to be fair and accessible to everyone. That law doesn't only rest in the coursepacks I had been reading and summarizing, but in the interaction between different actors who seek to meet the goal of justice and fairness.

À la fin de mon séjour, j'avais une plus grande soif d'apprendre, et de saisir l'opportunité que j'avais de m'impliquer davantage, privilégiée de l'éducation juridique que m'offrait la Faculté. J'avais l'intention de m'évader du droit. Mais, aussi loin que ce voyage m'ait menée, il m'a ramenée à la raison même pour laquelle j'avais choisi ce domaine.

## Reflections on a trip to the Supreme Court of Canada

by Marya Sawaf (LAW II)

This article has three purposes: 1) To briefly update you on the *Khadr* proceedings at the Supreme Court of Canada; 2) to encourage you to attend a hearing of particular interest to you (regardless of how many classes you have that day!); and 3) to reflect on a human instinct towards moral justice that comprises a logic which the Court struggled to translate into legal terms.

On Friday, November 13th, the *Supreme Court of Canada* heard *Prime Minister of Canada v. Khadr*. The issue before the Court was whether the Crown had a legal duty to request the repatriation of Omar Khadr, a Canadian citizen detained by the American government in Guantanamo. This duty was recognized at trial and affirmed by the Federal Court of Appeal. The Supreme Court hearing lasted five hours, where counsels for the Crown, Khadr and numerous prominent interveners including Amnesty International and the B.C. Civil Liberties, passionately presented their most compelling arguments for the recognition/denial of the government's positive duty to request repatriation.

The Muslim Law Student Association (MLSA) organized a trip to attend the hearing in Ottawa. For many of us, it was the first time in a courtroom. For all of us, the *Khadr* case was of deep personal interest. There is much to say about this amazing experience that I will not address here. As I write this, I am still awed by the powerfulness of the law and its impact on issues I care about most. To think I was present amongst Canada's most brilliant minds (judges, academics and lawyers alike) engaging with an issue that has been debated for many years, is both humbling and inspiring. I strongly urge each and every one of you to find an issue that interests you the most and attend a related hearing at the Supreme Court. You will not be disappointed.

Now moving to my last point: I will

mention an aspect of the case that most of you have likely not put much thought into. Essentially, there were two arguments for imposing a duty to request Khadr's repatriation that involved a s.7 *Charter* breach. The first breach required that there exist a positive duty on the government to make a diplomatic request, thus impeding its ability to deal with foreign countries. We all know how courts feel about imposing positive duties, especially on the government (which would otherwise find itself drowning in lawsuits). This reluctance is also exacerbated by the fact that the positive duty would be imposed in an area where the executive has traditionally had a great amount of discretion—foreign affairs. There is precedent for imposing positive duties in Canada, but it is certainly a difficult case to make.

The second argument framed the breach in a way the law is more comfortable with: reparation of harm. In 2003 and 2004, the Canadian Security Intelligence Service (CSIS) and the Department of Foreign Affairs and International Trade (DFAIT) interviewed Khadr at the prison at Guantánamo Bay. Thus, the argument went, the Canadian government was complicit to tactics of sleep-deprivation used against the victim, and interfered with Khadr's s.7 right to personal security. The remedy granted by the trial judge and upheld by the Federal Court of Appeal based on s.24(1) *Charter* ordered the government to request repatriation.

On appeal, the link between the particular breach and the remedy made posed a serious issue for the Supreme Court judges. Although a discretionary remedy, judges granting remedies under s.24(1) must still consider general principles of law and respect the authority of the executive branch. The first two courts justified the imposition of a duty by the "particular" and "unusual" circumstances of the case. This



is just another way of saying that the government's actions were so reprehensible that the unusual remedy, which for all practical purposes would impose a positive duty to repatriate, was justified.

However, a strict application of the principle of compensation, which underlies the conception of remedies, would arrive to a different result. How would requesting repatriation really correct the torture that was done over four years ago? Also, the U.S. retains the right to refuse Canada's request, so is this remedy truly effective in addressing the harm done? Despite these real concerns about connection and effectiveness, our instincts scream, "yes". This question would never have even occurred to most of us because socially, we operate with a different logic. You borrow my laptop charger, and take me out for cof-

fee to show your gratitude. I share my class notes with you, you bake me cookies. Your boyfriend buys you a shirt labeled a size larger than the rest of your wardrobe (it fits you perfectly), and apologizes to you over dinner at a fancy restaurant (where you order a triple chocolate cheesecake).

So it makes sense, right? Maybe. And maybe that is why s.24(1) is couched in such discretionary terms. And maybe that is why the Supreme Court of Canada will uphold the prior judgments. But maybe it won't, and maybe it will refuse to impose a positive duty to repatriate. Our human instincts would justify almost any court order in favor of a Canadian citizen who was tortured abroad as a child (and I realize this wording casts all of those who don't sympathize with Mr. Khadr outside of the circle of humanity... you heartless

hadeans). After all, the least the government can do is simply *ask* for repatriation, right? The government has behaved so wrongfully by taking part in those interviews, that it should repay in whatever unrelated form. It is easy to get worked up by the particularly sympathetic cause of Mr. Khadr and lose sight of the fact that moral outrage does not necessarily make good legal argument. The instinctive logic which we are so familiar with in our social interactions is not easily translated into legal terms. The law requires a much more precise and direct relationship between harm and remedy. It's Mr. Predictability and Mr. Fairness battling it out again, this time, however, it is outside of Foundations and inside the Supreme Court of Canada.

### ***Editorial continued from p.2***

It is really unfortunate that there aren't more occasions in which we get to discover the hidden talents of our classmates. Sure we have SkitNite and Law School of Rock, but making an academic presentation enjoyable raises Legal Meth attendance and allows more students to showcase their talent, especially those who might not exhibit their talents otherwise.

On that note, I thank my fellow classmates for the laughs and giggles, and wish them the best of luck on their assignment!





